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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF APRIL 1998

BEFORE

THE HON'BLE MR.JUSTICE H.N.NARAYAN

CIVIL REVISION PETITION NO.921/1998.

BETWEEN :

M.Huchaiah,
s/o.late.Mariyappa,
major, r/at.No.1143/86,
Ist Cross, Sarvajanika
Hostel Road, Vidyaranyapura,
Mysore-570 008. .. PETITIONER

(By Sri.K.Sreenivasagowda, Adv.)

AND :

1. M.N.Sowbhagya,
w/o.M.Huchaiah,
major.

2. M.H.Shruthi,
d/o.Huchaiah,
aged 9 years.

3. M.H.Brinda,
d/o.Huchaiah,
aged 7 years.

Respondents 2 and 3 are minors
rep.by next friend and mother
first respondent.
All are residing at K.T.No.57/3,
8th Cross, Chamundeshwarinagar,
Mandya-571 401. .. RESPONDENTS

(By Sri.K.L.Manjunath, Adv.)

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This CRP is filed u/s.115 of CPC against the order dt.16.1.98 passed in O.S.No.183/97 on the file of the Addl. Civil Judge and JMFC, Mandya, partly allowing the application filed by the plaintiffs for interim maintenance.

This petition coming on for admission this day, the Court made the following :-

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ORDER

This revision coming on for admission today is taken up for final disposal by consent, heard and disposed of by this order.

2. Respondents who are the wife and children of the petitioner herein have filed a suit for maintenance at the rate of Rs.2500/- per month including the litigation expenses. The petitioner is working as a Lecturer in the Marimallappa's College, Mysore. The status of the parties is not in dispute. The fact that the respondents are residing separately at Mandya away from the residence of the petitioner is not disputed. The trial Court, after considering the request of the plaintiffs for grant of interim maintenance has allowed the application in part and granted a sum of Rs.500/- per month in favour of the wife and Rs.375/- each in favour of the two children. This order is questioned on the grounds that a residential house is gifted to the 1st respondent by her father which is situated at Rajiv Nagar at Mysore; she is getting a rent of Rs.3,000/- per month and that the trial Court has ignored this vital material

while granting interim maintenance specially to the wife. The learned counsel for the petitioner has no objection for grant of maintenance at the rate of Rs.375/- each per month to the two children. Therefore, the short question that arises for consideration in this revision is whether the trial Court has erred in granting a maintenance of Rs.500/- p.m. to the wife viz., the 1st respondent. The fact that the 1st respondent's father gifted a house in her favour is not in dispute. It is her statement before the Court below that the said house was under lock and that recently her mother who is staying at Mysore has allowed some College boys related to her to stay in the house to look after the house and she is not getting any rent as such. Having regard to this statement, the trial Court has pointed out that the defendant has failed to produce any material to rebut this statement and therefore positively held that the 1st respondent has no independent income of xxx own to maintain herself. Though the plaintiffs asserted before the trial Court that the defendant is

working as a Lecturer and is getting monthly salary of Rs.5,440/-, they have not produced any document to show that the defendant is getting a salary of Rs.5,440/-. But inview of the admission made by the defendant that he is working as a Lecturer, the trial Court has taken his income at Rs.5,440/-. Even at this stage, the learned counsel has not disputed the petitioner's income which is around Rs.5000/-. Having regard to these facts, the trial Court has only determined the interim maintenance pending disposal of the suit. The contentions have tobe considered at the time of trial by the trial Court and it is always open to the defendant -petitioner to bring to the notice of the trial Court that 1st respondent is not a woman without any meals. These are all the facts which the trial Court has to consider at the trial and determine the financial status of the parties. The impugned order is not the final determination of the rights of the parties so far as the maintenance is concerned. Therefore, I do not see any illegality in the order as such, passed by the trial Court which requires tobe considered in this revision. The revision is therefore dismissed.

Sd/-
JUDGE

BKV